

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Rules and Regulations Implementing the Truth in Caller ID Act of 2009

WC Docket No. 11-39

COMMENTS OF MARK R. LEE

Dear Commissioners:

I am pleased to see the Commission taking prompt action on this matter of public interest, and applaud your broad and open manner in addressing this issue. Your questions regarding various aspects of the Proposed Rules shows a real interest in hearing the concerns of various parties before making a final version of the Rules.

In particular, I request that the Commission address several problems I have encountered in 10 years of litigation against unscrupulous telemarketers.¹ In many cases, the ages-old rule of “follow the money” is the most appropriate. However, in the case of unscrupulous telemarketers, they do their best to obfuscate and cover the money trail. Often, bits and pieces go to many different parties, none of whom could act on their own, but all of whom want to deflect blame to someone else. Often times, that “someone else” is a fly-by-night entity that no longer exists, or has few or no assets; instead, all the income has been diverted to the owners and officers as salaries and distributions.

While aspects of the law regarding conspiracy and “responsible third-party” can sometimes reach the other parties involved, the common person often cannot understand or unravel these complicated webs, and it effectively deters any action by the aggrieved consumer. I am certain that is the exact objective of these kinds of arrangements.

I have also heard countless excuses that “I just bought leads,” and the telemarketing company that generated the leads is long gone, or engages in the behavior mentioned above. More troubling, and particularly applicable in the current proceeding, is the falsification of Caller ID so that it is extremely difficult to ascertain who placed the call in the first place. Once again, misleading and putting hurdles in front of the aggrieved consumer is the problem.

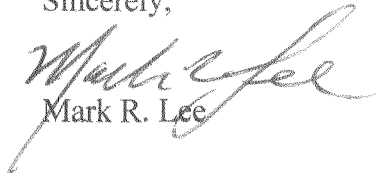
I urge the Commission to adopt rules specifying who are the liable parties so that neither individual citizens nor parties involved in the calls are left guessing who is liable for falsifying Caller ID information, such as:

¹ I do recognize the distinction between fair and honest telemarketing, uninformed telemarketing, and unscrupulous (or deceitful) telemarketing. I am concerned with the latter case only.

1. Specify that the individual (as opposed to just the entity for whom that individual worked) who places a call with false Caller ID is jointly responsible for any violations. Require entities to keep accurate records of who places any such call.
 - a. If an entity fails to keep such records, make the senior executive officer of that entity personally liable instead (i.e., allow a complainant to substitute the senior executive).
 - b. If that individual is not sufficiently identified so that service of process can be effectuated on that individual, make the senior executive officer personally liable instead. -- This will ensure that an entity does not simply hire and fire flunkies off the street, who then disappear but provide a convenient excuse for the telemarketer. Such information is required at the time of hiring by Department of Homeland Security rules anyway, so that should be readily available to the telemarketing company hiring the individual. The Commission should not allow unscrupulous telemarketers to shield themselves from accountability under the Commission's rules by violating Homeland Security rules.
2. Require third-party spoofing providers to promptly cut-off service (i.e., within 24 hours) to any customer who fails to address any consumer complaint made to the spoofing service about spoofed ID.
 - a. If the third-party service fails to do so, make them liable for any further violations to *any* recipient. The third-party service is in the best position to determine such things as the volume of calls placed by particular clients or numbers, the history and creditworthiness of clients, any prior complaints, etc. Regardless of the spoofing service's subjective "good faith," a consumer complaint ought to be sufficient to put them on notice that possible illegal violations are occurring. By the time the spoofing service is identified through call tracing/ANI information, and thus by the time a complaint is filed, the spoofing service ought to be well aware of the calling behavior of the client.
 - b. Require the spoofing service to get that complainant's assurance before supplying any more services to that client. This will also encourage prompt resolution of complaints by legitimate client companies.

Thank you for your time and attention to this matter.

Sincerely,


Mark R. Lee